

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

TYLER MILLER and
MILLER 3, LLC,

Plaintiffs,

vs.

Cause No. 1:12-cv-00789 MCA/CG

ALFREDO VILLALOBOS and
RWI CONSTRUCTION, INC.,

Defendants.

PLAINTIFFS' FIRST AMENDED COMPLAINT FOR NEGLIGENCE

COME NOW the Plaintiffs, by and through his counsel of record, Bregman & Loman, P.C. (Eric Loman) and The Garrett Law Center, PLLC, and for their amended complaint state the following:

Parties and Jurisdiction

1. Plaintiff Tyler Miller ("Miller") is a resident of and is domiciled in Oklahoma.
2. Plaintiff Miller 3, LLC is an Oklahoma limited liability company, which is domiciled in Oklahoma. All of Miller 3, LLC's members are domiciled in Oklahoma.
3. Upon information and belief, Defendant Alfredo Villalobos ("Villalobos") was a resident of and domiciled in New Mexico at times relevant to this action.
4. Upon information and belief, Defendant RWI Construction, Inc. ("RWI") is a New Mexico corporation and is principally located and domiciled in New Mexico.
5. The motor vehicle accident that gives rise to this action occurred in Lea County, New Mexico.
6. The damages suffered by the Plaintiffs exceed \$75,000.
7. This Court has jurisdiction pursuant to 28 U.S.C § 1332.

Factual Allegations

8. On or about October 22, 2010, Plaintiff Miller was travelling southbound on state road 18 in Lea County.

9. The truck that Miller was driving is owned by Miller 3, LLC.

10. At that same time, Villalobos was driving a truck owned by RWI southbound on the same road.

11. Upon information and belief, Villalobos was an employee or agent of RWI and acting in the course and scope of his employment or agency at that time.

12. Villalobos caused a collision between the truck he was driving and Miller's vehicle.

13. Villalobos was cited for careless driving.

14. As a result of the collision, Plaintiff Miller suffered personal injuries and incurred other damages, including lost wages, pain and suffering and emotional distress.

15. As a result of the collision, Miller 3, LLC suffered property damage.

Count I - Negligence (Villalobos)

16. Plaintiffs incorporate the preceding paragraphs as though set forth herein.

17. Villalobos had a duty to exercise reasonable care while operating the truck.

18. That duty was owed to the general public, including the Plaintiffs.

19. Villalobos breached that duty by negligently operating the truck in a manner that caused the collision with Plaintiff's vehicle.

20. Because Villalobos operated the vehicle in a manner that was contrary to law, he was negligent *per se*.

21. As a result of Villalobos' negligence, Plaintiffs were injured and suffered damages.

22. Plaintiffs are entitled to a judgment against Villalobos for compensatory damages, pre- and post-judgment interest and costs of this action.

Count II- Vicarious Liability (RWI)

23. The preceding paragraphs are incorporated as though set forth herein.

24. Upon information and belief, RWI was the employer and/or principal of Villalobos when the accident occurred.

25. Villalobos was acting in the course and scope of his employment and/or agency when the accident occurred.

26. RWI was the owner of the vehicle driven by Villalobos when the accident occurred.

27. RWI is vicariously liable for the negligence of Villalobos.

28. Plaintiffs are entitled to a judgment against RWI for compensatory damages, pre- and post-judgment interest and costs of this action.

Jury Demand

29. Plaintiffs respectfully request a jury in this matter.

WHEREFORE Plaintiffs respectfully request judgment against the Defendants for damages, interest, costs and any other relief that the Court deems just and proper.

Respectfully submitted:

BREGMAN & LOMAN, P.C.

By: 

Eric Loman
CAID # 03/231
Attorney for Plaintiffs
111 Lomas Blvd. N.W., Ste. 230
Albuquerque, NM 87102
(505) 761-5700

-and-

THE GARRETT LAW CENTER, PLLC

David Mitchell Garrett
Amber Garrett
401 S. Boston Ave., Ste. #2201
Tulsa, OK 74101
(918) 895-7216

I certify that the foregoing was filed
via the Court's CM/ECF system, which
causes all counsel of record to be served
by email.


Eric Loman